



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Hon. Olan R. Van Zandt, Chairman
Joint Legislative Advisory Committee
Tioga, Texas

Dear Sir:

Opinion No. 0-1367
Re: Appropriation in Section 11 of House
Bill 933, 46th Legislature, as a special
fund.

Your letter requesting the opinion of this department upon the question as to whether the appropriation set-up in Section 11 of House Bill 933, 46th Legislature, is a special fund within the meaning of the "limitation of payments" clause of the general rider to the departmental appropriation bill, is received.

Section 1 of House Bill 933 appropriates from the General Revenue Fund for each of the fiscal years of 1940 and 1941 so much money as may be necessary for the accomplishment of the purposes of the act, not to exceed \$6,825,827.00.

Section 11 of House Bill 933 provides in part:

"All expenditures for costs of administering the various funds named in this Act shall be paid out of the monies allocated in this Act, and such expenditures shall be the amounts and as authorized by the General Departmental Appropriation Bill for the current biennium as therein itemized and not otherwise, except as otherwise herein provided."

The Act then proceeds to allocate out of the appropriations made in Section 1, for each year of the biennium, the following:

The sum of \$124,270.00 for the administration of the Equalization Division of the Department of Education;

the sum of \$6,750.00 for the School Plants Division of the Department of Education; the sum of \$10,000.00 for the Census Division in the Department of Education to be expended for seasonal labor in the checking of the census rolls, and the sum of \$6,600.00 to be used by the State Auditor's Department, as follows:

Accountant in charge of rural aid applications, \$3,000.00;
Junior Accountant, \$1,800.00; Junior Accountant, \$1,800.00.

Your specific attention is directed to the language "such expenditures shall be the amounts and as authorized by the General Departmental Appropriation Bill for the current biennium as therein itemized and not otherwise, except as otherwise herein provided."

That the language "except as otherwise herein provided" has direct reference to the appropriations specifically made both as to purpose and amount for the State Auditor's Department is clear, and is made the more apparent by observing that the General Departmental Appropriation Bill recognized these specific itemized appropriations to the State Auditor's Department, in that no provision was made in the General Departmental Appropriation Bill for these employees in the State Auditor's Department, since they had already been definitely provided for in House Bill 933.

Section 11 does not purport to make the allocations therein mentioned available to the department as a lump sum appropriation, but specifically provides that the expenditures therefrom shall be "the amounts as authorized by the General Departmental Appropriation Bill for the current biennium as therein itemized and not otherwise."

In the General Departmental Appropriation Bill, under these specific headings, the Legislature itemized in detail expenditures to be made from these allocations, such itemizations covering the full amount thereof. The Governor, in the exercise of his veto power, eliminated from the General Departmental Appropriation Bill certain items thereof. Such veto necessarily was completely effective to eliminate such expenditures. Under the terms of Section 11, there can be no surplus subject to the jurisdiction of the Limitation of Payments Board, as constituted in the General Rider to the General Departmental Appropriation

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Bill, for the reason that expenditures out of the allocations referred to are expressly limited by Section 11 of House Bill 933 to the amounts authorized and itemized in the General Departmental Appropriation Bill, and there is a specific provision against any further expenditures by the use of the words "and not otherwise."

You are therefore advised that there is, in this appropriation, no surplus in a special fund of the character made subject to the jurisdiction of the Limitation of Payments Board in the Rider to the Departmental Appropriation Bill.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (s) R. W. Fairchild
Assistant

RWF:pbp

APPROVED SEP 12, 1939

(s) Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
opinion committee
By BWB
chairman